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MEMORANDUM

TO: Commissioner Robert E. Nicolay
Pamela Barclay

FROM: Jack C. Tranter

RE: Comments on Draft Task Force Report

DATE: October 27, 2005

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1. As a general matter, I was disappointed that narrative was not added to reflect the Task Force's rationale for making the identified recommendations. While the minutes, which were extraordinarily complete and well done, are attached, few readers will hunt through more than 100 pages of minutes to discern the Task Force's reasoning.

2. On page 2, in the chart summarizing the Task Force recommendations, the fourth bullet notes the recommendation to deregulate the purchase and installation of clinical information systems. The type of change identified is a revision to the Commission's regulations. However, when this change is identified on page 8 (first bullet), statutory cite for the business office equipment exemption is included. A cite to the Maryland Code could be mistakenly read as a suggestion that the law itself needs to be changed. This bullet should be revised to be consistent with the fourth bullet in the chart on page 2, which notes that only a regulatory change is required.

3. On page 3, in the list identifying the Task Force recommendations, the second item under the first bullet reads:

> Add policies to the Acute Inpatient Services Chapter of the State Health Plan permitting shell space.

I do not believe this accurately summarizes the Task Force's position. As you know, there is no existing policy in the Acute Care Chapter addressing shell space. However, in many recent reviews, Staff has advised that a project which includes shell space for future inpatient beds will not be recommended for approval. The change considered and

recommended by the Task Force was for the Commission to direct Staff to no longer enforce this "small p" policy and permit projects to include shell space so long as the hospital agrees not to seek a rate increase to fund those expenditures, at the time the shell space is built.

4. On page 3, the second bullet identifies the Task Force recommendation as forming a technical advisory group to study alternatives to the 140% rule. This is the current state of affairs. My recollection is that the Task Force voted in favor of requiring that the 140% rule be used in the State Health Plan. While a recommendation will be made today that is consistent with the language on page 3, if not accepted by the Task Force, the narrative must be changed.

5. Beginning on page 5 and continuing on page 6, the Report addresses the capital expenditures threshold and the Task Force recommendation that it be increased from $1.65 to $10 million for hospitals subject to the HSCRC's jurisdiction, and $5 million for all other projects. The second paragraph on page 2 compares Maryland's existing capital expenditure threshold to the experience in other states. The last line notes, "[b]y 2004, the Maryland threshold ($1.6 million) though indexed, was lower than what the national median ($2.0) and mode ($2.0 million) threshold values in comparable CON states." The Report then summarizes briefly the comments submitted regarding the capital expenditure threshold. What I expected to see next was a paragraph summarizing the Commission's rationale for recommending the $10 million and $5 million benchmarks, particularly since the discussion in the second paragraph on this page suggests that these levels are unusual and too high. I recommend that appropriate narrative be added either here or under ¶ 1 on page 7, which identifies the Task Force recommendation.

6. On page 7, ¶ 2, cites the Commission's recommendation that the public information hearing requirement for hospital closures in jurisdictions with more than two hospitals, and the requirement to obtain an exemption from CON review for hospital closures in jurisdictions with fewer than three hospitals be removed. Again, a brief discussion of the Commission's rationale should be added.

7. On page 9, the second full paragraph in line 12 reads: "The CON law was amended to allow hospitals to construct acute care bed capacity equal to their current licensed capacity without reference to any need standards of the State Health Plan." I am aware of no statutory provision so stating. My recollection is that the Acute Care

Chapter is the basis for this comment. While "CON law," as a technical matter, includes the Commission's regulations, I believe that this sentence is confusing and should be changed to relate that, "The Acute Care Chapter allows hospitals...."

8. On page 10, ¶ 2, states that the Task Force recommends: "In updating the State Health Plan, priority should be given to revision of the Acute Inpatient Services and Ambulatory Surgical Services chapters." Under ¶ 2, the first bullet identifies specific provisions in the Acute Care Chapter that the Task Force recommends be eliminated. However, I do not recall the Task Force recommending that these changes be made as part of the overall substantive review of the Acute Inpatient Services Chapter. I believe that the Task Force recommended that these changes be made as soon as possible. If my recollection is wrong, I will make a motion to that effect at today's meeting. In addition, you recently advised me that Staff opposes elimination of the Standard .06A(5), the charity care policy. I have no objection if the list is revised to eliminate this standard. Finally, Standards .06D(9) and .06C(5) are included among the standards to be eliminated. However, the Task Force did not recommend that these standards be eliminated. The recommendation was that more appropriate and contemporary standards be used. I do not believe that these two standards should be included in the list of standards to be removed asap.

9. The second bullet under ¶ 2 states that the Task Force recommended that policies be added to the Acute Inpatient Services Chapter permitting shell space. As related above, the Acute Care Chapter does not need to be revised for Staff's policy on shell space to be changed. As noted above, the Task Force recommendation is that the Commission direct Staff to discontinue advising applicants that Staff will not recommend approval if the project includes shell space for future acute care beds. Rather, Staff should be directed that a hospital proposing a project including shell space for future acute care beds should not be recommended for denial on that basis, so long as the applicant agrees not to seek a contemporaneous rate increase.

10. I discovered two typos. On page 6, in the next to the last line, "($2.0)" should be changed to "($2.0 million)." Also, on page 12, the last word in the third line following the heading "Task Force Recommendations" should be changed from "by" to "be."

JCT/cmc